

FILED  
Court of Appeals  
Division II  
State of Washington  
3/1/2019 4:29 PM

No. 52256-0-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION TWO

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State of Washington,

Respondent,

v.

Jeffrey William Hoch,

Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR COWLITZ COUNTY

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APPELLANT'S OPENING BRIEF

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## **A. ASSIGNMENT OF ERROR**

The trial court violated Jeffrey Hoch's fundamental right to parent when it refused to modify a condition of community custody that forbids him from having any contact with his son until the son reaches the age of 18.

## **B. ISSUE**

Sentencing courts may only impose a sentencing condition that infringes on a parent's right to the companionship of their child if the condition is reasonably necessary to protect the child. When the sentencing court conducts this analysis, it must determine the appropriate scope and duration of the condition.

Thirteen years after being convicted of a crime, Mr. Hoch moved the court to modify a condition of community custody that prohibited him from having any contact with his son until he reaches the age of 18. The court denied the motion without considering whether less restrictive means existed to protect Mr. Hoch's son and without considering the duration of the condition. Should this court remand with instructions for the court to conduct the required inquiry?

### C. STATEMENT OF THE CASE

In 2005, Jeffrey Hoch pleaded guilty to two counts of rape of a child in the second degree. CP 16-17. The victim of this crime was Mr. Hoch's girlfriend's daughter, whom he lived with at the time of the offense. RP 4. Mr. Hoch is not biologically related to the victim. At the time of his sentencing, the court imposed a condition of community custody that prohibited him from having any form of contact with minors. CP 23. No exception exists that allows Mr. Hoch to have contact with his minor children. *Id.*

In 2018, Mr. Hoch moved to modify this condition so that he could contact his biological son. CP 16, 19. The court denied the motion, and he now appeals. CP 28.

### D. ARGUMENT

**The court violated Mr. Hoch's fundamental right to the care and companionship of his son when it refused to modify Mr. Hoch's judgment and sentence to allow him to have contact with his son.**

- a. Parents possess a fundamental liberty interest in the care, custody, and companionship of their children.

Parents possess a fundamental liberty interest in the care and welfare of their children, and courts necessarily undertake a grave responsibility when they permanently deprive a father from having any contact with his children. U.S. Const. amend. XIV; *In re Dependency of*

*Schermer*, 161 Wn.2d 927, 941-42, 169 P.3d 452 (2007); *see In re Sego*, 82 Wn.2d 736, 738, 513 P.2d 831 (1973). A parent’s liberty interest in the care and companionship of his children is “far more precious than any property right;” consequently, governmental infringements on this right constitute a unique and onerous deprivation. *Santosky v. Kramer*, 455 U.S. 758-59, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982); *Lassiter v. Dep’t of Soc. Servs.*, 452 U.S. 18, 27, 101 S. Ct. 2153, 68 L. Ed. 2d 640 (1981).

With these considerations, courts must be mindful that it is no slight thing to permanently deprive a parent of the companionship of his child. *In the Matter of the Dependency of T.L.G.*, 126 Wn. App. 181, 198, 108 P.3d 156 (2005).

- b. Courts can only impose sentencing conditions that infringe upon a parent’s liberty interest in his children if the condition is reasonably necessary to accomplish the State’s essential needs and the court imposes the condition sensitively.

When a parent is convicted of a felony offense, the court may impose “crime related prohibitions” as a condition of the parent’s sentence. RCW 9.94A.505(9). A “crime-related prohibition” prohibits “conduct that directly relates to the circumstances of the crime for which the offender has been convicted.” RCW 9.94A.030(10).

However, an individual’s constitutional rights limit the government’s ability to impose sentencing conditions. *State v. Warren*,

165 Wn.2d 17, 32, 195 P.3d 940 (2008). When a “crime related prohibition” impinges on the fundamental right to parent one’s children, the court must sensitively impose the prohibition, and the court can only impose the condition to the extent necessary to “accomplish the essential needs of the State and public order.” *In re Pers. Restraint of Rainey*, 168 Wn.2d 367, 374, 229 P.3d 686 (2010). First, a court must examine the State’s interest in imposing the condition. *Id.* at 377. Certainly, the State has a compelling interest in preventing harm to children. *State v. Letourneau*, 100 Wn. App. 424, 439, 997 P.2d 436 (2000).

Second, the court must examine the reasonable necessity of the sentencing condition; this assessment is “delicate and fact specific, not lending itself to broad statements and bright line rules.” *Rainey*, 168 Wn.2d at 377. The court must first determine whether the parent’s criminal behavior poses a risk to the child such that it warrants interference with the parent-child relationship. *Id.* at 379; *see also State v. Ancira*, 107 Wn. App. 650, 656, 27 P.3d 1246 (2001). Next, the court must determine the scope and duration of the condition and examine if both the scope and duration will actualize the State’s interest in protecting the child. *Rainey*, 168 Wn.2d at 380-81. In making this determination, the court must ask if no reasonable alternative exists to achieve the State’s interest. *Id.*; *Warren*, 165 Wn.2d at 34-35.

If a court fails to provide a reason for the scope and/or duration of the condition restricting the parent’s ability to contact his child, this Court must remand with instructions for the sentencing court to “address the parameters of the [condition] under the ‘reasonably necessary’ standard.” *Rainey*, 168 Wn.2d at 382; *accord State v. Ihrig*, No. 461528, 2015 WL 8332898, \*2-3 (Wash. Ct. App. 2015).<sup>1</sup>

This Court reviews crime-related prohibitions for an abuse of discretion. *Rainey*, 168 Wn.2d at 375. A court abuses its discretion when it applies the wrong legal standard. *Id.*

- c. Here, the court failed to correctly employ the “reasonably necessary” standard when it neglected to modify the condition banning Mr. Hoch from having all contact with his child; therefore, this Court should reverse.

The court failed to correctly employ the “reasonably necessary” standard when it neglected to address how a condition that prohibits all contact between Mr. Hoch and his son until his son reaches the age of 18 actualizes the State’s interest in protecting his son. While the constitution requires a court to conduct a fact-specific inquiry, the court instead turned to a factually inapposite case to affirm the condition that prohibits all

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<sup>1</sup> Mr. Hoch cites to this unpublished case pursuant to GR 14.1.

contact between Mr. Hoch and his son. Accordingly, this Court should reverse.

In 2005, Mr. Hoch pleaded guilty to two counts of child rape in the second degree. CP 16-17; RCW 9A.44.076. The victim of this offense was his then-girlfriend's daughter; the two are not biologically related. RP 4; CP 19. At the time of the offenses, Mr. Hoch lived with his then-girlfriend and the victim. RP 5. The original judgment and sentence forbade Mr. Hoch from having any contact with minors. CP 23. This condition does not carve out any exception for Mr. Hoch's biological children. *Id.*

Thirteen years later, in 2018 and while still in prison, Mr. Hoch moved to modify this condition of community custody to allow him to contact his own biological children; specifically, he moved for the court to allow him to contact his son. CP 16, 19. Mr. Hoch's son's legal guardian filed a declaration in support of Mr. Hoch's motion, stating she believed it would be beneficial for Mr. Hoch's son to "know his biological father and to have a relationship with him." CP 24.

The State opposed the motion, arguing the condition should remain based on this Court's decision in *State v. Corbett*, 158 Wn. App. 576, 242 P.3d 52 (2010). In *Corbett*, the defendant was convicted of four counts of first degree child rape for raping his wife's six year old daughter from another marriage. *Id.* at 581-83. The defendant lived with and parented the

six year old at the time of the rapes. *Id.* The court imposed a condition of community custody that forbade him from having contact with minors without prior approval from his Community Corrections Officer (CCO) and Sexual Deviancy treatment provider. *Id.* at n.14. This Court upheld the condition of community custody because the defendant was in a parental role with his victim at the time of the rapes and his method of sexual abuse was not gender-specific. *Id.* at 600-01. Thus, this Court found that the defendant's minor children "fell within a class of persons he victimized." *Id.* at 601. Because the condition still allowed the defendant to contact his children, albeit with prior approval, the court found the condition did not unduly burden his parental rights. *Id.*

The State, essentially, argued that because Mr. Hoch also lived with the victim, the court should refuse to modify the condition of community custody and follow the ruling in *Corbett*. RP 5-8.

Following the State's argument, the court noted that at the time of Mr. Hoch's crime, he was "kind of...[in a] parental like role" to the victim. RP 9. The court also noted the State's interest was to protect children and acknowledged Mr. Hoch has a fundamental right to raise children without State interference. RP 10. It also observed that sentencing courts can only restrict fundamental rights if reasonably necessary to further the State's interest, but it did not state why a condition that

prohibited Mr. Hoch from having *any* contact with his son until he reaches the age of 18 was appropriate; instead, it ruled

Defendant's motion to visit his biological son is hereby denied as a reasonable crime-related prohibition protecting children who have been or may be in his care and control, as guided by the analysis in [*Corbett*].

RP 11-12; CP 28.

The court's analysis is flawed and incompatible with a parent's fundamental right to parent for several reasons. First, the court failed to assess whether any reasonable, less-restrictive alternative existed that could protect Mr. Hoch's son but still achieve the State's interest. *Warren*, 165 Wn.2d at 34-35; *Ihlig*, 2015 WL 8332898, at \*2. Relatedly, the court incorrectly failed to reexamine the scope of the condition; here, the condition at issue prohibits Mr. Hoch from having *any* contact with his son. *Rainey*, 168 Wn.2d at 380-81. Even the defendant in *Corbett* still had the ability to visit with his children, albeit with prior approval. The restriction at issue here not only encumbers Mr. Hoch's current relationship with his son but also prohibits Mr. Hoch from parenting any future child he may father in the future.

Second, the court failed to explain how the duration of the no-contact order was appropriate; however, "the command that restrictions on fundamental rights be sensitively imposed is not satisfied merely because,

at some point and for some duration, the restriction is reasonably necessary to serve the State's interest." *Id.* at 381.

And third, although the court's analysis must be fact-specific, the court instead to draw an inaccurate parallel with the *Corbett* case. *Rainey*, 168 Wn.2d at 377; RP 8-9, 11-12. While turning to other cases may be useful, "not all sex offenders are the same; nor are all who plead to a particular type of offense." *U.S. v. Wolf Child*, 699 F.3d 1082, 1094 (9th Cir. 2012). Mr. Hoch was not identically situated to the defendant in *Corbett*, and the court should not have simply parroted *Corbett's* rationale.

Although the court recited the proper standard to assess the constitutionality of the condition at issue, it did not employ the correct legal test to assess whether the condition comported with Mr. Hoch's right to the care and companionship of his son. Accordingly, this Court should remand with instructions for the court to assess the scope and duration of the condition.

**E. CONCLUSION**

Based on the foregoing, Mr. Hoch respectfully requests that this court remand with instructions for the sentencing court to employ the correct legal test to assess the constitutionality of the condition that prohibits his contact with all minors.

DATED this 1st day of March, 2019.

Respectfully submitted,

/s Sara S. Taboada  
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Attorney for Appellant

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION TWO**

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STATE OF WASHINGTON,	)	
	)	
RESPONDENT,	)	
	)	NO. 52256-0-II
v.	)	
	)	
JEFFREY HOCH,	)	
	)	
APPELLANT.	)	

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March 01, 2019 - 4:29 PM

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**Appellate Court Case Title:** State of Washington, Respondent v. Jeffrey W. Hoch, Appellant  
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